

ESTTA Tracking number: **ESTTA1104841**

Filing date: **12/29/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Q Tonic, LLC
Granted to Date of previous extension	12/30/2020
Address	20 JAY STREET, SUITE 630 BROOKLYN, NY 11201 UNITED STATES
Attorney information	MICHELLE ALVEY HUSCH BLACKWELL LLP 190 CARONDELET PLAZA, SUITE 600 ST. LOUIS, MO 63105 UNITED STATES Primary Email: pto-sl@huschblackwell.com 314-480-1500
Docket Number	537481.142

**Applicant Information**

Application No.	88956191	Publication date	09/01/2020
Opposition Filing Date	12/29/2020	Opposition Period Ends	12/30/2020
Applicant	Elite IP Holdings, LLC 1600 N. PARK DRIVE WESTON, FL 33326 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary supplement drink mixes; Dietarysupplemental drinks; Dietary and nutritional supplements; Liquid nutritional supplement; Nutritional supplement energy bars; Nutritional supplements; Nutritional and dietary supplements formed and packaged as bars; Powdered nutritional supplement drink mix
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Energy drinks; Isotonic drinks; Non-alcoholic drinks, namely, energy shots; Sports drinks

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	88529922	Application Date	07/23/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	Q		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in stylized font.		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages, except beer and wine, namely, distilled spirits, prepared alcoholic cocktails and alcoholic cocktail mixes		

U.S. Registration No.	4196241	Application Date	12/14/2011
Registration Date	08/28/2012	Foreign Priority Date	NONE
Word Mark	Q CLUB		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in a stylized font, above the wording "CLUB" also in a stylized font.		
Goods/Services	Class 032. First use: First Use: 2011/10/12 First Use In Commerce: 2011/10/12 carbonated, non-alcoholic beverages		

U.S. Registration No.	4351943	Application Date	10/09/2012
Registration Date	06/18/2013	Foreign Priority Date	NONE
Word Mark	Q DRINKS		
Design Mark			
Description of Mark	The mark consists of a stylized letter "Q" above the term "DRINKS".		
Goods/Services	Class 035. First use: First Use: 2011/09/28 First Use In Commerce: 2011/09/28 wholesale distributorships featuring non-alcoholic carbonated beverages		

U.S. Registration No.	5920599	Application Date	05/17/2019
Registration Date	11/26/2019	Foreign Priority Date	NONE
Word Mark	Q ELDERFLOWER TONIC WATER		
Design Mark			
Description of Mark	The mark consists of the words "Q ELDERFLOWER TONIC WATER" in a stylized format.		
Goods/Services	Class 032. First use: First Use: 2019/03/01 First Use In Commerce: 2019/03/01 Non-alcoholic beverages, namely, carbonated beverages		

U.S. Registration No.	4057891	Application Date	04/08/2011
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Registration Date	11/22/2011	Foreign Priority Date	NONE
Word Mark	Q GINGER		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in a stylized font, above the wording "GINGER" also in a stylized font.		
Goods/Services	Class 032. First use: First Use: 2011/03/14 First Use In Commerce: 2011/03/14 carbonated, non-alcoholic beverages		

U.S. Registration No.	5860214	Application Date	07/27/2018
Registration Date	09/17/2019	Foreign Priority Date	NONE
Word Mark	Q GINGER ALE		
Design Mark			
Description of Mark	The mark consists of the letter "Q" above the stacked wording "GINGER ALE" all in a stylized format.		
Goods/Services	Class 032. First use: First Use: 2016/12/00 First Use In Commerce: 2016/12/00 Non-alcoholic beverages, namely, carbonated beverages		

U.S. Registration No.	4792357	Application Date	12/22/2014
Registration Date	08/18/2015	Foreign Priority Date	NONE
Word Mark	Q GINGER BEER		
Design Mark			
Description of Mark	The mark consists of a the stylized letter "Q" above the wording "GINGER BEER".		
Goods/Services	Class 032. First use: First Use: 2014/10/02 First Use In Commerce: 2014/10/02 Carbonated, non-alcoholic beverages		

U.S. Registration No.	4452790	Application Date	04/24/2013
Registration Date	12/24/2013	Foreign Priority Date	NONE
Word Mark	Q GRAPEFRUIT		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in a stylized font, above the wording "GRAPEFRUIT" also in a stylized font.		
Goods/Services	Class 032. First use: First Use: 2013/04/01 First Use In Commerce: 2013/04/01 carbonated, non-alcoholic beverages		

U.S. Registration No.	5359113	Application Date	05/09/2017
Registration Date	12/19/2017	Foreign Priority Date	NONE
Word Mark	Q INDIAN TONIC WATER		
Design Mark			
Description of	The mark consists of a stylized "Q" above the words "Indian Tonic Water".		

Mark	
Goods/Services	Class 032. First use: First Use: 2017/04/01 First Use In Commerce: 2017/04/01 Non-alcoholic beverages, namely, carbonated beverages

U.S. Registration No.	4270172	Application Date	05/21/2012
Registration Date	01/08/2013	Foreign Priority Date	NONE
Word Mark	Q KOLA		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in a stylized font, above the wording "KOLA" also in a stylized font.		
Goods/Services	Class 032. First use: First Use: 2012/04/01 First Use In Commerce: 2012/04/01 Carbonated, non-alcoholic beverages		

U.S. Application No.	88615232	Application Date	09/12/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	Q LEMON		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in stylized font above the term "LEMON".		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Non-alcoholic beverages, namely, carbonated beverages; soft drinks		

U.S. Registration No.	5869582	Application Date	07/27/2018
Registration Date	09/24/2019	Foreign Priority Date	NONE
Word Mark	Q LIGHT GINGER BEER		
Design Mark			
Description of Mark	The mark consists of the letter "Q" above the stacked wording "light GINGER BEER" all in a stylized format.		
Goods/Services	Class 032. First use: First Use: 2019/03/01 First Use In Commerce: 2019/03/01 Non-alcoholic beverages, namely, carbonated beverages		

U.S. Registration No.	5869583	Application Date	07/27/2018
Registration Date	09/24/2019	Foreign Priority Date	NONE
Word Mark	Q LIGHT TONIC WATER		
Design Mark			
Description of Mark	The mark consists of the letter "Q" above the stacked wording "LIGHT TONIC WATER" all in a stylized format.		
Goods/Services	Class 032. First use: First Use: 2019/03/01 First Use In Commerce: 2019/03/01 Non-alcoholic beverages, namely, carbonated beverages		

U.S. Registration No.	5860261	Application Date	08/01/2018
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Registration Date	09/17/2019	Foreign Priority Date	NONE
Word Mark	Q MIXERS		
Design Mark			
Description of Mark	The mark consists of the letter "Q" above the wording "MIXERS" all in a stylized format.		
Goods/Services	Class 032. First use: First Use: 2017/03/00 First Use In Commerce: 2017/03/00 Non-alcoholic beverages, namely, carbonated beverages Class 035. First use: First Use: 2017/03/00 First Use In Commerce: 2017/03/00 wholesale distributorship and retail store services, featuring carbonated, non-alcoholic beverages		

U.S. Application No.	88615212	Application Date	09/12/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	Q MIXERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Non-alcoholic cocktail bases; non-alcoholic cocktail mixes		

U.S. Application No.	88615221	Application Date	09/12/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	Q ORANGE		
Design Mark			
Description of Mark	The mark consists of the letter "Q" in stylized font above the term "ORANGE".		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Non-alcoholic beverages, namely, carbonated beverages; soft drinks		

U.S. Registration No.	3421169	Application Date	08/22/2007
Registration Date	05/06/2008	Foreign Priority Date	NONE
Word Mark	Q TONIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/05/21 First Use In Commerce: 2007/07/30 carbonated, non-alcoholic beverages		

Related Proceedings	91266785
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Attachments	Q_QUASH_Opposition.pdf(373656 bytes )
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Signature	/Michelle Alvey/
Name	MICHELLE ALVEY
Date	12/29/2020

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on December 29, 2020.

/Michelle Alvey/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


Mark: Q QUASH  
Application No. 88956191

Q TONIC, LLC	)	
	)	
Opposer,	)	
	)	Proceeding No.
v.	)	
	)	
ELITE IP HOLDINGS, LLC	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION TO APPLICATION NO. 88956191**




Q Tonic, LLC, 20 Jay Street, Suite 630, Brooklyn, NY 11201 (“Opposer”), is being and will be damaged by the registration of the mark shown at U.S. Application No. 88956191 and hereby opposes the same. The grounds for the opposition are as follows:

- On June 9, 2020, Elite IP Holdings, LLC, 1600 N. Park Drive, Weston, Florida 33326 (“Applicant”) filed the below Application (“the Application”) for the below goods in Classes 5 and 32 (“Applicant’s Goods”). The Application is based on an alleged bona fide intent to use the mark in commerce.

<p><a href="#">Q QUASH and Design</a></p>  <p>SN: 88956191</p>	<p>Published - Request for Extensions of Time to TTAB, September 30, 2020 Filed: June 9, 2020</p>	<p>(Int'l Class: 05) Dietary supplement drink mixes; Dietary supplemental drinks; Dietary and nutritional supplements; Liquid nutritional supplement; Nutritional supplement energy bars; Nutritional supplements; Nutritional and dietary supplements formed and packaged as bars; Powdered nutritional supplement drink mix (Int'l Class: 32) Energy drinks; Isotonic drinks; Non-</p>
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		alcoholic drinks, namely, energy shots; Sports drinks
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2. Opposer owns rights in and to the mark Q in connection with non-alcoholic and alcoholic beverages and related services (“Opposer’s Goods and Services”) and owns the below U.S. Applications and Registrations and all common law rights related thereto:



Mark	Status	Goods/Services
<a href="#">Q (Stylized)</a>  SN: 88529922	Allowed - Intent to Use 1st Extension of Time Granted, November 19, 2020 Filed: July 23, 2019	(Int'l Class: 33) Alcoholic beverages, except beer and wine, namely, distilled spirits, prepared alcoholic cocktails and alcoholic cocktail mixes
<a href="#">Q CLUB (Stylized)</a>  RN: 4196241 SN: 76710006 Disclaimer: NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLUB" APART FROM THE MARK AS SHOWN.	Registered 8 & 15, June 30, 2018 Int'l Class: 32 First Use: October 12, 2011 Filed: December 14, 2011 Registered: August 28, 2012	(Int'l Class: 32) carbonated, non-alcoholic beverages
<a href="#">Q DRINKS (Stylized)</a>  RN: 4351943 SN: 76712607 Disclaimer: "DRINKS"	Registered 8 & 15, July 29, 2019 Int'l Class: 35 First Use: September 28, 2011 Filed: October 9, 2012 Registered: June 18, 2013	(Int'l Class: 35) wholesale distributorships featuring non-alcoholic carbonated beverages
<a href="#">Q ELDERFLOWER TONIC WATER (Stylized)</a>	Registered, November 26, 2019 Int'l Class: 32 First Use: March 1, 2019	(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages



Mark	Status	Goods/Services
 <p>RN: 5920599 SN: 88435222 Disclaimer: "ELDERFLOWER TONIC WATER"</p>	<p>Filed: May 17, 2019 Registered: November 26, 2019</p>	
<p><a href="#">Q GINGER (Stylized)</a></p>  <p>RN: 4057891 SN: 76707190 Disclaimer: "GINGER"</p>	<p>Registered 8 &amp; 15, November 29, 2017 Int'l Class: 32 First Use: March 14, 2011 Filed: April 8, 2011 Registered: November 22, 2011</p>	<p>(Int'l Class: 32) carbonated, non-alcoholic beverages</p>
<p><a href="#">Q GINGER ALE (Stylized)</a></p>  <p>RN: 5860214 SN: 88055844 Disclaimer: "GINGER ALE"</p>	<p>Registered, September 17, 2019 Int'l Class: 32 First Use: December, 2016 Filed: July 27, 2018 Registered: September 17, 2019</p>	<p>(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages</p>
<p><a href="#">Q GINGER BEER (Stylized)</a></p>  <p>RN: 4792357 SN: 76717392</p>	<p>Registered, August 18, 2015 Int'l Class: 32 First Use: October 2, 2014 Filed: December 22, 2014 Registered: August 18, 2015</p>	<p>(Int'l Class: 32) carbonated, non-alcoholic beverages</p>

Mark	Status	Goods/Services
Disclaimer: "GINGER BEER"		
<p><a href="#">Q GRAPEFRUIT (Stylized)</a></p>  <p>RN: 4452790 SN: 76714030 Disclaimer: NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GRAPEFRUIT" APART FROM THE MARK AS SHOWN.</p>	<p>Registered 8 &amp; 15, October 24, 2019 Int'l Class: 32 First Use: April 1, 2013 Filed: April 24, 2013 Registered: December 24, 2013</p>	<p>(Int'l Class: 32) carbonated, non-alcoholic beverages</p>
<p><a href="#">Q INDIAN TONIC WATER (Stylized)</a></p>  <p>RN: 5359113 SN: 87442532 Disclaimer: "INDIAN TONIC WATER"</p>	<p>Registered, December 19, 2017 Int'l Class: 32 First Use: April 1, 2017 Filed: May 9, 2017 Registered: December 19, 2017</p>	<p>(Int'l Class: 32) non-alcoholic beverages, namely, carbonated beverages</p>
<p><a href="#">Q KOLA (Stylized)</a></p>  <p>RN: 4270172 SN: 76711575 Disclaimer: KOLA</p>	<p>Registered 8 &amp; 15, February 5, 2019 Int'l Class: 32 First Use: April 1, 2012 Filed: May 21, 2012 Registered: January 8, 2013</p>	<p>(Int'l Class: 32) carbonated, non-alcoholic beverages</p>
<p><a href="#">Q LEMON (Stylized)</a></p>	<p>Allowed - Intent to Use 1st Extension of Time Granted, November 19, 2020 Filed: September 12, 2019</p>	<p>(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages; soft drinks</p>

Mark	Status	Goods/Services
 <p>SN: 88615232 Disclaimer: "LEMON"</p>		
<p><a href="#">Q LIGHT GINGER BEER (Stylized)</a></p>  <p>RN: 5869582 SN: 88055866 Disclaimer: "LIGHT GINGER BEER"</p>	<p>Registered, September 24, 2019 Int'l Class: 32 First Use: March 1, 2019 Filed: July 27, 2018 Registered: September 24, 2019</p>	<p>(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages</p>
<p><a href="#">Q LIGHT TONIC WATER (Stylized)</a></p>  <p>RN: 5869583 SN: 88055880 Disclaimer: "LIGHT TONIC WATER"</p>	<p>Registered, September 24, 2019 Int'l Class: 32 First Use: March 1, 2019 Filed: July 27, 2018 Registered: September 24, 2019</p>	<p>(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages</p>
<p><a href="#">Q MIXERS (Stylized)</a></p>  <p>RN: 5860261 SN: 88062000 Disclaimer: "MIXERS"</p>	<p>Registered, September 17, 2019 Int'l Class: 32,35 First Use: March, 2017 Filed: August 1, 2018 Registered: September 17, 2019</p>	<p>(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages (Int'l Class: 35) wholesale distributorship and retail store services, featuring carbonated, non-alcoholic beverages</p>

Mark	Status	Goods/Services
<a href="#">Q MIXERS</a> SN: 88615212 Disclaimer: "MIXERS"	Allowed - Intent to Use 1st Extension of Time Granted, September 15, 2020 Filed: September 12, 2019	(Int'l Class: 32) Non-alcoholic cocktail bases; non-alcoholic cocktail mixes
<a href="#">Q ORANGE (Stylized)</a>  SN: 88615221 Disclaimer: "ORANGE"	Allowed - Intent to Use 1st Extension of Time Granted, November 19, 2020 Filed: September 12, 2019	(Int'l Class: 32) Non-alcoholic beverages, namely, carbonated beverages; soft drinks
<a href="#">Q TONIC (Stylized)</a>  RN: 3421169 SN: 76681011 Disclaimer: "TONIC"	Renewed, May 6, 2018 Int'l Class: 32 First Use: May 21, 2007 Filed: August 22, 2007 Registered: May 6, 2008 Last Renewal: May 6, 2018	(Int'l Class: 32) carbonated, non-alcoholic beverages

(all of Q Tonic's common law and statutory rights in and to the above-referenced marks are hereafter referred to as "the Q Marks").

3. Since long prior to the filing date of the Application and any alleged use by Applicant, Opposer has used the Q Marks in connection with Opposer's Goods and Services.

4. Opposer's Q Marks are inherently distinctive and uniquely associated with Opposer in connection with Opposer's Goods and Services offered under the Q Marks by reason of the continuous use, promotion and advertising by Opposer. Such use, promotion and advertising occurred prior to the filing date of the Application and any alleged use by Applicant.

5. Opposer has expended substantial resources in developing and providing Opposer's Goods and Services under its Q Marks. As a result, the Q Marks have developed a reputation and goodwill of great value.

6. Upon information and belief, Applicant's Goods are or will be directed to the same or related class of customers as those for Opposer's Goods and Services and are or will be sold in the same channels of trade.

7. Applicant's mark so resembles the Q Marks as to be likely, when used in conjunction with Applicant's Goods, to cause confusion, mistake, or deception by causing the public to believe that the services offered in connection with Applicant's mark originate from, or are otherwise sponsored or endorsed by Opposer in violation of Lanham Act §2(d) (15 U.S.C. 1052(d)).

8. For at least the reasons stated above, Opposer will be damaged by Applicant's registration of the Application.

WHEREFORE, Opposer prays that Application No. 88956191 be refused registration.

Respectfully submitted

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